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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/080,806	02/21/2002	Franz Josef Gassmann	298-154	9917
28249	7590	10/19/2005	EXAMINER	
DILWORTH & BARRESE, LLP 333 EARLE OVINGTON BLVD. UNIONDALE, NY 11553			MAHONEY, CHRISTOPHER E	
			ART UNIT	PAPER NUMBER
			2851	

DATE MAILED: 10/19/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

### Period for Reply

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 15 June 2005.  
2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.  
3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-33 is/are pending in the application.  
4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-33 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All    b) ☐ Some \*    c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_.
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_.

## **DETAILED ACTION**

### ***Priority***

Receipt is acknowledged of papers submitted under 35 U.S.C. 119(a)-(d), which papers have been placed of record in the file.

### ***Claim Objections***

Claims 2 and 3 are objected to under 37 CFR 1.75(c), as being of improper dependent form for failing to further limit the subject matter of a previous claim. Applicant is required to cancel the claim(s), or amend the claim(s) to place the claim(s) in proper dependent form, or rewrite the claim(s) in independent form. Claim 2 recites that a light signal has wavelengths in the visual range. There is no claimed relationship between the light signal and the recording device or any part of the recording device. Claim 3 recites that a light signal consists of white light. Plenty of light signals consist of white light. There is no structural relationship between the claimed light signal and the recording device.

Claims 1, 4 and 30-33 are objected to because of the following informalities:

Claim 1, "capable being" should be "capable of being"

Claim 4, "chromatically" should be "chromaticity"

Claims 30-33, "reliably reproduction" needs correction.

Appropriate correction is required.

### ***Claim Rejections - 35 USC § 112***

The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it

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pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

Claims 1-33 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. Page 4 lines 7-12 of the specification does not support the limitation of wherein the one or more white light spots with known spectral intensity distribution and/or chromaticity coordinates and/or brightness, which are recorded at the **same time as a picture is taken**.

***Claim Rejections - 35 USC § 103***

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claims 1-26 are rejected under 35 U.S.C. 103(a) as being unpatentable over Schwartz et al. (USPN 4511229) in view of Kaplan (USPN 4977521) In reference to claim 1, 11-13,16, 19 and 20, Schwartz et al. discloses a recording device for recording an image information, characterized by the fact that the recording device has one or more media for creating light signals with know spectral intensity distribution and/or chromaticity coordinates and/or brightness, col. 3 lines 1-17 and col. 5 lines 23-27, which are recorded at the same time as a picture is taken by means of a recording medium, ref. 270, positioned in or capable of being positioned in or capable of being positioned in the recording device, col. 6 lines 49-56. Schwartz et al. invention is directed to color compensation and therefore uses colored light signals instead

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of the claimed limitation of one or more white light spots. Kaplan discloses a means for corrected variations in a photographic medium by printing a calibration pattern on the medium after the medium is exposed, col. 5 line 66 – col. 6 line 11. Kaplan further discloses wherein the calibration pattern is based on a gray scale (varying brightness), col. 6 lines 9-11. It would have been obvious to one of ordinary skill in the art at the time the invention was made to incorporate a calibration pattern utilizing varying brightness in the camera of Schwartz et al. This would be done to allow for calibration of black and white films that are interchangeably with color films used in the single lens reflex cameras disclosed by Schwartz et al.

In reference to claim 2, Schwartz et al. discloses wherein the light signal has wavelengths in the visual range or in the range of shorter wavelengths, col. 4 lines 9-12.

In reference to claim 3, Schwartz et al. discloses wherein the light signal consists of white light, col. 5 lines 16-22.

In reference to claim 4, Schwartz et al. discloses wherein by means of the light-signal-creating media several separate light signals with respective known chromaticity coordinates that can be recorded by the recording medium can be created, col. 5 lines 23-27.

In reference to claim 5, Schwartz et al. discloses wherein several spatially and/or spectrally separate light signals can be created, col. 5 lines 23-27.

In reference to claim 6, Schwartz et al. discloses wherein by means of the light-signal-creating media light a red, a green and a blue light signal can be created, col. 5 lines 23-27.

In reference to claim 7, Schwartz et al. discloses wherein the red, the green, and the blue light signals together produce white light, col. 5 lines 17-27

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In reference to claim 8, Schwartz et al. discloses wherein by means of the light-signal-creating media a light signal complementary to red, a light signal complementary to green, and a light signal complementary to blue can be created, col. 5 lines 54-57 and col. 3 lines 13-17 (any colors from the "Macbeth" test chart can be selected).

In reference to claim 10, Schwartz et al. discloses wherein the camera is an analog or digital photo camera, an analog or digital movie camera, or a TV camera, col. 3 lines 35-37.

In reference to claim 14, Schwartz et al. discloses wherein the camera or the recording medium is executed in such manner that the image information is recorded in several spectral ranges, col. 5 lines 23-27.

In reference to claim 15, Schwartz et al. discloses wherein the image formation is recorded in the three spectral ranges of red, green, and blue, or complementary ranges, or between the blue/green and green/red ranges or ranges complementary thereto, and the light-signal-creating media are executed in such manner that the light signal can be recorded in each of these spectral ranges, col. 5 lines 23-27.

In reference to claim 17, Schwartz et al. discloses wherein the light-signal-creating media include light-emitting diodes, incandescent lamps, laser diodes, fluorescent diodes, luminance diodes, glow lamps, or other light media, col. 5 lines 23-27.

In reference to claim 18, Schwartz et al. discloses wherein the light-signal-creating media have on or more chromaticity and/or intensity filters positioned between the lighting medium and the recording medium, col. 6 lines 28-31

In reference to claim 21, Schwartz et al. discloses wherein the calibration parameters are used to minimize the divergence of the reconstructed light signal from the camera-created light signal or the light signal complementary thereto in the image reconstruction, col. 4 lines 57-68.

In reference to claim 22, Schwartz et al. discloses a camera with film or an electronic device positioned within the camera as recording media, an imaging or camera lens positioned in front of an opening into the camera and arranged to create an image of an object outside the camera upon the recording media, col. 6 lines 35-52.

In reference to claim 23, Schwartz et al. discloses wherein the recording medium is film, the light-signal-creating element is positioned in front of the film, col. 6 lines 35-52. Schwartz et al. does not disclose an imaging lens for the light-signal-creating element positioned between the same and film. It would have been obvious to one of ordinary skill in the art at the time of the invention to realize that a imaging lens could be incorporated between the light-signal-creating element and the film. Schwartz et al. discloses that LEDs could be used as the light-signal creating element, col. 5 lines 24-27. One would incorporate an imaging lens to concentrate the light on the film if the distance between the LEDs and the film was too great.

In reference to claim 24-26, Schwartz et al. discloses wherein the recording media is a film comprising an image area and recorded/developed light signal points of a light-signal-creating element for white light, white light having different intensity values or white light split in spatial separated RGB-points, col. 3 line 55 – col. 4 line 18.

***Response to Amendment***

The Declaration under 37 CFR 1.132 filed June 15, 2005 is insufficient to overcome the rejection of the claims based upon 35 USC 103 and 35 USC 112 as set forth in the last Office action because:

The declaration is unsigned. The applicant alleges that it is obvious to himself and that he is one of ordinary skill in the art. This does not mean a disinterested party who is also one of ordinary skill in the art would reasonably know that brightness information can only be obtained by a reference signal taken at the same time the picture is taken. The applicant recites alleged advantages of the present invention and differences the applicant believes exist between the present invention and the cited prior art. However the applicant has not distinguished the differences between the applied prior art and the present invention *as claimed*.

#### ***Response to Arguments***

Applicant's arguments filed June 15, 2005 have been fully considered but they are not persuasive. The examiner notes that the declaration filed June 15, 2005 was unsigned. A signed copy has not yet been received. The applicant argues that specification only makes sense if the recorded at the same time a picture is taken. This allegation is only supported by an unsigned declaration made by the applicant. If the feature was of enough importance such that it is needed in the claim language it is unclear why it was not presented in clear, plain language in the specification as originally filed. The examiner respectfully disagrees with the applicant and maintains the rejection under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. One of ordinary skill in the art would not readily know that one or more white light spots with known spectral intensity distribution and/or chromaticity coordinates

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and/or brightness, *have to be* recorded at the same time as a picture is taken based on the specification as originally filed. The applicant argues that an arrangement such as Schwartz in view of Kaplan is unreliable because the filters might differ in quality, light distribution the filters might not be uniform and the fiber bundles might not possess equal length. and it is impossible to use a film possessing more than three layers. This does not distinguish the claims from the cited combination. It just alleges advantages of the present invention as disclosed. Additionally the applicant argues that there is no teaching of recording the spots at the same time the photograph is taken. This is material which is not properly disclosed in the applicant's own specification.

In response to applicant's arguments against the references individually, one cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981); *In re Merck & Co.*, 800 F.2d 1091, 231 USPQ 375 (Fed. Cir. 1986).

Applicant's arguments fail to comply with 37 CFR 1.111(b) because they amount to a general allegation that the claims define a patentable invention without specifically pointing out how the language of the claims patentably distinguishes them from the references.

Applicant's arguments do not comply with 37 CFR 1.111(c) because they do not clearly point out the patentable novelty which he or she thinks the claims present in view of the state of the art disclosed by the references cited or the objections made. Further, they do not show how the amendments avoid such references or objections.

### ***Conclusion***

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The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Stemme (U.S. Pat. No. 4,344,683) teaches a recording device which has a media (light source) for creating white light spots of known intensity. Several separate light signals with known chromaticity can be recorded on the film as it is color film. Several spatially or spectrally separate light signals can be created (from the film).

This is an RCE of applicant's earlier application. All claims are drawn to the same invention claimed in the earlier application and could have been finally rejected on the grounds and art of record in the next Office action if they had been entered in the earlier application. Accordingly, **THIS ACTION IS MADE FINAL** even though it is a first action in this case. See MPEP § 706.07(b). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

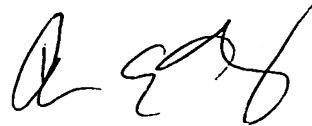
A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no, however, event will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Christopher E. Mahoney whose telephone number is (571) 272-2122. The examiner can normally be reached on 8:30AM-5PM, Monday-Thursday.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Judy Nguyen can be reached on (571) 272-2258. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

A handwritten signature in black ink, appearing to read 'C. Mahoney', is positioned above the printed name.

Christopher E Mahoney  
Primary Examiner  
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